

**LUMMI NATION
SPILL PREVENTION AND RESPONSE CAPABILITY
DEVELOPMENT**

2008 Annual Synthesis Report



Prepared For:
Lummi Indian Business Council

Prepared By:
Water Resources Division
Lummi Natural Resources Department

December 2010

This project has been funded wholly or in part by the United States Environmental Protection Agency under Assistance Agreement No. BG-97042602-1 to the Lummi Nation. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.

Introduction

Large amounts of crude oil, petroleum products, and other hazardous materials are transported and stored near the Lummi Indian Reservation. These hazardous materials are transported by ships, pipelines, trucks, and railroad and are used, produced, and/or stored throughout the Reservation area, particularly in the Cherry Point Heavy Impact Industrial Zone immediately north of the Reservation boundary. Accidents, equipment failure, and human error have the potential to result in large spills and disastrous human and environmental consequences. Many of these hazardous materials are toxic to people and animals if inhaled or contacted. Oil and chemical spills or releases to waters on or adjacent to the Reservation have the potential to threaten public health and safety and destroy some of the most productive and valuable ecosystems in the world. Spills or releases of petroleum products, chemicals, or other hazardous materials to land can threaten public safety, public health, and the environment. To date, there has not been a large hazardous material spill on the Reservation that has impacted Lummi Nation Waters. However, future residential and economic growth on the Reservation, in the adjacent Cherry Point Heavy Impact Industrial Zone, and in areas upstream from the Reservation will increase the risk of a hazardous material emergency on the Reservation.

Because of the potential consequences, it is important for the Lummi Nation to develop and implement a plan to effectively respond to a hazardous material spill or release on or adjacent to the Reservation. The Lummi Natural Resources Department has been actively developing spill response capabilities since the mid-1990s and completed the Lummi Nation Spill Prevention and Response Plan in October 2005 (LWRD 2005). Continuing efforts to develop spill prevention and response capabilities include staff training and spill response drills, equipment upgrades, planning, research, and public outreach. These efforts contribute to achieving the Lummi Nation goals of protecting the public health and safety of Reservation residents and protecting treaty rights to fish and gather throughout all usual and accustomed areas. These activities also contribute to achieving the EPA strategic goals of clean and safe water and healthy communities and ecosystems.

This annual synthesis report is a summary of the Lummi Nation spill prevention and response capability development activities conducted during the January 1, 2008 through December 31, 2008 period. The activities are divided into the following categories: Staff Training and Oil Spill Response Drills, Planning, Oil Spill Response Incidents, Public Outreach, and Data Collection/Research.

Spill Prevention and Response Capability Development Activities

1. Staff Training and Oil Spill Response Drills:

Spill prevention and response training for staff members is conducted through both dedicated classes and through table-top and boom deployment exercises. The staff members identified below attended the following training programs, workshops, or oil spill response drills during 2008. Agendas or lists of training topics were transmitted to the EPA as part of semi-annual progress reports and are not being transmitted as part of this annual synthesis report.

- a) A 24-hour Hazardous Materials Technician training course (NIEHS 303) was organized by the Lummi Water Resources Division and provided to 25 LIRC staff members including representatives from the Natural Resources Department, Police Department, Lummi Commercial Company, and the Lummi Tribal Sewer and Water District from June 18 through June 20. The EPA Performance Partnership Grant paid the costs of the meeting room, meals, books, and other training materials. The instructor was provided by the University of Washington at no additional cost. Attendees:

	Name	Department
1	Merle Jefferson	LNR
2	Leroy Deardorff	LNR
3	Randy Kinley	LNR
4	Jeremy Freimund	LNR
5	Stacy Fawell	LNR
6	Jamie Williams	LNR
7	Frank Lawrence III	LNR
8	Victor Johnson	LNR
9	Gregg Dunphy	LNR
10	Tony George	LNR
11	Latisha Toby	LNR
12	Robin Wilson	LNR
13	Linda Delgado	LNR
14	Isaac Jefferson	LNR
15	Ernest Jefferson	LNR
16	Flavian Point	LNR
17	Ed Hillaire	LNR
18	Lizzie Oberlander	LNR
19	Stacie Finkbonner	LCC
20	Billie Kinley	LCC
21	Toni Taylor	LCC
22	Ed Conway	LNPD
23	Ed Hillaire	LNPD
24	Rob Jefferson	LNPD
25	David James	LNPD

- b) A practice boom deployment using the retrofitted 26-foot long spill response boat (MV Responder) occurred on June 20, 2008 as part of the 24-hour training.

- c) Participation in the Incident Command System (Unified Command and the Planning Section) of the September 25, 2008 ConocoPhillips petroleum oil refinery spill drill.
Attendees: Jeremy Freimund, Randy Kinley, Jamie Wilson
- d) 40-Hour Northwest Oil Spill Control Course, August 18, 2008 through August 22, 2008.
Attendee: Frank Lawrence III

2. Planning:

- a) Two members of Lummi Nation Spill Response Team (Jeremy Freimund and Frank Lawrence III) participated in site visits conducted on July 30 and 31, 2008 to locations where oil spill response strategies are identified or proposed as part of an overall effort to update the North Puget Sound Geographic Response Plan (GRP). The site visits were conducted with representatives from the Washington Department of Ecology, the Washington Department of Fish and Wildlife, and the Marine Spill Response Corporation (MSRC). The site visits were intended to evaluate if the existing oil spill response strategies could be realistically implemented. Alternative strategies were identified where necessary and the GRP was revised.
- b) Participation in the September 17, 2008 Regional Response Team meeting in Bellingham.
- c) Comments on the North Puget Sound Geographic Response Plan (GRP) were completed and transmitted to the Washington Department of Ecology, and a meeting was held with Department of Ecology representatives to provide an overview of the Lummi Nation spill response capabilities and to review the GRP comments.
- d) A Memorandum of Agreement was signed between the Lummi Nation and the ConocoPhillips Corporation to control the access of ConocoPhillips employees to the Lummi Nation tidelands. The objectives of the agreement are to protect the Lummi Nation's natural resources during spill response activities or drills and beach assessment activities; allow ConocoPhillips employees and spill response contractors access to Lummi Nation tidelands and associated adjacent uplands for spill response deployment drills/practice, during an actual spill response, and during beach assessment activities; and define the terms and conditions for granting access to Lummi tidelands.

3. Oil Spill Response Incidents:

- a) A site visit was conducted on December 4, 2008 to evaluate spill control measures on a tribal fishing boat in Squalicum Harbor, Bellingham.

4. Public Outreach:

The oil spill prevention and response activities were publicized in the community through articles in the Lummi Nation monthly newspaper (*Squol Quol*).

- a) One *Squol Quol* article described the participation of Lummi Water Resources Division staff in the GRP update by the Washington Department of Ecology.

- b) One *Squol Quol* article reported the participation of Lummi Natural Resources staff in a tabletop spill drill at ConocoPhillips.

5. Data Collection/Research:

The Lummi Natural Resources Department staff regularly conducts data collection activities and research in support of the overall departmental mission to protect and restore tribal natural resources. These data collection/research activities support the goals of the oil spill prevention and response capability development by documenting background and ambient conditions. This information will be useful in evaluating the effectiveness of response efforts in the event of an oil spill and to protect public health and safety.

Although some of these data collection/research and related activities are funded through the EPA (e.g., the ambient water quality monitoring program), other data collection and research activities are supported through other funding sources.

Data collection/research activities conducted during 2008 that were focused on quantifying the tribal natural resources on tribal tidelands included the following:

- a) The annual Manila Clam Stock Assessment Survey for 2008 was conducted in Lummi Bay and Portage Spit.
- b) A staff member was hired to coordinate and conduct the Lummi Intertidal Baseline Inventory (LIBI). The LIBI is intended to delineate the ecological baseline of the Lummi tidelands.

Reference:

Lummi Water Resources Division (LWRD). 2005. Oil Spill Prevention and Response Plan.
Prepared for the Lummi Indian Business Council. October

ATTACHMENTS

MEMORANDUM OF AGREEMENT

Between

Lummi Nation and ConocoPhillips Company

PURPOSE: The purpose of this agreement is to identify the terms under which the ConocoPhillips Company (ConocoPhillips) or its designated contractor(s) have permission to access the Lummi Nation tidelands on the Lummi Indian Reservation. The approximate location of the Lummi Nation tidelands are shown in Exhibit 1 and consist of all lands located between the extreme low water mark and the mean high water mark within the Reservation.

PARTIES TO AGREEMENT: The parties to this agreement are the Lummi Nation, a federally recognized Indian tribe (2616 Kwina Road, Bellingham, WA 98226) and the ConocoPhillips Company (3901 Unick Road, Ferndale, WA 98248), which is a corporation organized under the laws of the State of Delaware and qualified to do business in the State of Washington.

BACKGROUND FACTS ASSERTED BY THE LUMMI NATION: Under the Treaty of Point Elliot (12 Stat. 927) dated January 22, 1855 and an Executive Order dated November 22, 1873 (12 Stats. At Large, p. 928) the Lummi Nation reserved rights to the tidelands within the Lummi Indian Reservation. The Lummi Nation is the beneficial owner of the tidelands, which are held in trust for it by the United States. The Lummi Nation has exclusive occupancy rights and all the benefits associated with those rights. The federal courts have confirmed these rights in four cases: *United States v. Romaine*, 255 Fed. 253 (9th Cir. 1919); *United States v. Stotts*, 49 F.2d 619 (W.D. Wash. 1930); *United States v. Boynton*, 53 F.2d 297 (9th Cir. 1931), and more recently *United States, Lummi Nation v. Keith E. Milner and Shirley A. Milner, et al*, Civil Action No. C01-809R (U.S. District Court, W D. Wash 2003).

In addition to the tidelands on the Lummi Indian Reservation, the Lummi Nation has reserved rights to fish throughout their usual and accustomed (U&A) grounds and stations, which extend from the Fraser River to the environs of Seattle (*United States v. Washington* 384 F.Supp.312 (W.D.Wash. 1974, *affirmed* 520 F.2d 676(9th Cir. 1975)), *cert. Denied* 423 U.S. 1086; *aff'd sub nomen Washington v. Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U.S. 658 (1979).

Title 13 of the Lummi Code of Laws (LCL) restricts the use of the tribal tidelands. Pursuant to LCL Title 13.01.040, "Lummi Tidelands are closed to persons who are not members of the Lummi Nation, in the absence of a lease permitting non-member use of the tidelands, or use permits issued pursuant to this Title." The Lummi Indian Business Council (LIBC – the governing body of the Lummi Nation) has the authority to grant Rights-Of-Way (ROW) upon tidelands within the Reservation boundaries. The LIBC has allowed use of Lummi tidelands by non-enrolled members of the Lummi Nation through leases and permits. Title 13 authorizes the LIBC to grant or deny access to Lummi Nation tidelands.

OBJECTIVES: The objectives of this agreement are to:

- Protect Lummi Nation natural resources during spill response activities/drills and/or beach assessment activities.
- Allow ConocoPhillips Company staff and spill response contractors access to Lummi Nation tidelands and associated adjacent uplands for spill response deployment drills/practice and during an actual spill response, as well as during beach assessment activities.

- Define the terms and conditions for granting access to Lummi tidelands.

TERMS AND CONDITIONS: Pursuant to LCL Title 13, the ConocoPhillips Company staff and spill response contractors are hereby granted access to Lummi Nation tidelands under the following terms and conditions:

1. Notice and Agreement

- a) For any planned spill response deployment drills/practice and/or beach assessment activities that will require access to the Lummi Nation tidelands, ConocoPhillips will provide a minimum of three (3) weeks advance notice to the Lummi Nation. The notice will include a description of the planned activity (e.g., what is planned, how it will be conducted, why it is necessary, location, duration, the number of people). Notice will be provided in writing to the following person:
 - Lummi Natural Resources Department Director (2616 Kwina Road, FAX 384-4737)
- b) The Lummi Nation shall acknowledge receipt of the notice within 10 days of receipt, and after consultation with the Lummi Planning Director, Lummi Police Department Director, Lummi Cultural Resources Department Director, and the LIBC, will either (1) confirm that the drills/practice can occur as proposed, or (2) notify ConocoPhillips of any potential conflicts or difficulties that may arise because of the date, time, location or duration of the proposed activities. If Lummi notes any conflicts with the proposal, the parties shall meet and confer to resolve the conflicts and agree upon a date, time, and location for the proposed activities.
- c) For any actual spill response, required notice associated with the spill response will be deemed to be adequate notice.

2. Prohibited Activities

Prohibited activities include all those set forth in LCL Title 13.02.020:

- a) No person shall deposit or willfully permit the deposit of any debris, rubbish, or refuse upon the tidelands;
- b) No person shall deface or destroy the natural beauty of the rocks, cliffs, vegetation, and other objects of nature upon or within tidelands, unless such action occurs directly from activities ConocoPhillips is required to undertake as part of spill response activities directed by an Incident Commander and authorized by the Lummi Nation;
- c) No crabbing, clamming, hunting, fishing;
- d) No harvesting or collecting any living or non-living thing—to include driftwood, shells, sand, gravel, or rocks;
- e) No fires of any kind, including charcoal fired barbeques;
- f) No overnight camping, or any activities during hours of darkness unless required during the response of an actual spill;
- g) No operating or parking any motorized vehicle except as provided below;
- h) No construction or placement of any boat ramps, docks, or rafts — except under terms and conditions of a separate encroachment permit or lease;
- i) No construction or placement of any shore defense works — except under terms and conditions of a separate encroachment permit or lease;
- j) No consumption of alcoholic beverages, intoxication, or disorderly behavior;
- k) No possession of drugs or firearms;
- l) No acts of indecency or immorality.

It is understood that operating or parking motorized vehicles on tribal tidelands may be necessary during an actual oil spill response. This MOA authorizes this temporary use under the following conditions:

- a) Beach area depressions created during response activities shall be reshaped to pre-disturbance beach level upon completion of the response activities.
- b) All trenches, depressions, or holes created in the beach area shall be backfilled prior to inundation by tidal waters.
- c) All natural habitat features on the beach larger than 12 inches in diameter, including trees, stumps, logs, and large rocks shall be retained on the beach following the activity, although they may be moved temporarily during an actual or practice response.

3. Restoration of Premises

ConocoPhillips shall promptly remove all equipment, vehicles, materials, and supplies at the conclusion of each practice or actual spill response activity and shall restore Tribal tidelands and adjacent uplands to their natural condition existing prior to such activity.


4. Indemnifications and Insurance

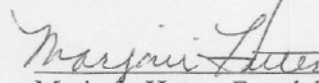
- a) ConocoPhillips agrees to protect, defend, save harmless, and indemnify the Lummi Nation from and against all claims, suits and actions arising from negligent acts or omissions of ConocoPhillips, or its authorized contractors or subcontractors, including their agents or employees, in the performance of its spill response deployment drills/practice and actual spill response activities on Lummi tidelands and adjacent uplands.
- b) ConocoPhillips agrees to provide the Lummi Nation with evidence of insurance coverage, in the form of a certificate of insurance from a solvent insurance provider and/or a letter confirming coverage from a solvent insurance pool, which is sufficient to address the insurance and indemnification obligations set forth in this Agreement and which names the Lummi Nation as an additional insured. At a minimum, such insurance coverage shall provide for minimum liability limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate for its liability exposures, including comprehensive general liability, errors and omissions, and auto liability. Notwithstanding the above, ConocoPhillips may elect to self-insure all or any part of its insurance requirements to the extent allowed by applicable law. Upon request, ConocoPhillips shall provide the Lummi Nation with a letter of self-insurance evidencing its compliance with this clause.

TERMINATION: Either party to this agreement may terminate its participation with written notice of intent to terminate followed by a formal termination letter. No amendment or alteration of this agreement shall arise by implication, course of conduct, or change in law. This agreement may be altered only by a subsequent written document, signed by the parties, expressly stating the parties' intention to amend their agreement.

Lummi Nation

ConocoPhillips Company

 Date: 10/8/08
Richard Jefferson, Director
Lummi Planning Department

 Date: 9.24.08
Marjorie Hatter, Ferndale Refinery Manager
ConocoPhillips Company

Memorandum of Agreement for Lummi Reservation
Tideland Access – ConocoPhillips Company
September 25, 2008

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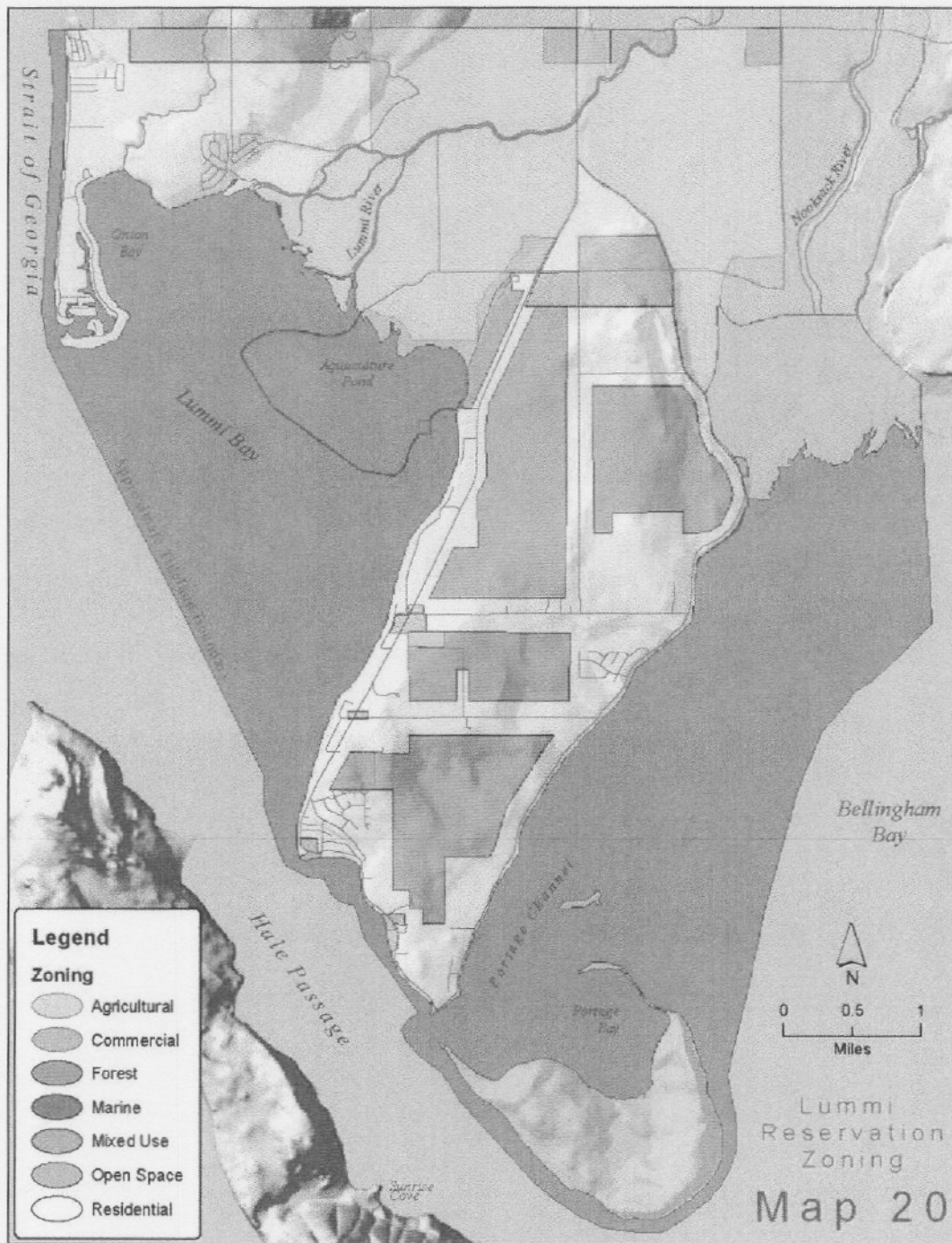


Exhibit 1. Approximate Lummi Indian Reservation Tideland Boundary